

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 602, 525 Griffin Street, Dallas, Texas 75202; and New Mexico Environment Department, Occupational Safety and Health Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

[59 FR 42497, Aug. 18, 1994]

#### § 1952.367 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved New Mexico's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) In accordance with Subpart E of part 1953 of this chapter, New Mexico's State plan amendment, dated January 3, 1997, excluding coverage of all private sector employment on Federal military facilities and bases (see § 1952.365), and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government, from its State plan was approved by the Acting Assistant Secretary on September 24, 1997.

[59 FR 14556, Mar. 29, 1994. Redesignated at 59 FR 42496, Aug. 18, 1994, as amended at 62 FR 49911, Sept. 24, 1997]

### Subpart EE—Virginia

#### § 1952.370 Description of the plan as initially approved.

(a) The Virginia Department of Labor and Industry is the agency responsible for administering the plan and the Virginia Department of Health is designated as responsible for occupational health matters. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1) and all safety and health standards adopted by the Secretary of Labor, except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring), will be enforced by the State upon approval of the plan by the Assistant Secretary. The State will retain its existing standard applicable to ionizing radi-

ation. New Federal standards will be adopted by the Safety and Health Codes Commission within 6 months after Federal promulgation.

(b)(1) The plan includes enabling legislation passed by the Virginia legislature in February 1973, and amendments thereto enacted in 1975 and 1976. The Commissioner of the Department of Labor and Industry will have authority to enforce and administer laws regarding the safety and health of employees. Safety inspections will be conducted by the Department of Labor and Industry whereas health inspections will be conducted by the Department of Health. The Department of Labor and Industry will issue citations, set abatement dates, and issue summons and/or warrants for a civil district court determination of violations and assessment of proposed penalties for such safety and health violations. Appeals of the district court's determination shall be to the circuit court sitting without a jury. Fire safety inspections and enforcement will be provided by agreement with the State Fire Marshal. The State plan provides for the coverage of all employees including coverage of public employees within the Commonwealth with the exception of maritime workers, employees of the United States, and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under section 4(b)(1) of the Occupational Safety and Health Act of 1970. The Commissioner is authorized to establish a program applicable to employees of the State and its political subdivisions.

(2) The legislation also insures inspections in response to employee complaints; right of employer and employee representatives to accompany inspectors; notification to employees or their representatives when no compliance action is taken as a result of alleged violations; notification to employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of

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standards and abatement requirements; effective sanctions against employers for violations of rules, regulations, standards and orders; employee right of review in the State civil courts and employee participation in this judicial review process. In addition, there is provision for prompt restraint of imminent danger situations by injunction and "red-tag" procedures. The plan also proposes to develop a program to encourage voluntary compliance by employers and employees, including provision for onsite consultation, which program will not detract from its enforcement program.

(c) The plan sets out goals and provides a timetable for bringing it into conformity with part 1902 of this chapter at the end of three years after commencement of operations under the plan. The plan also includes the State Administrative Process Act. A merit system of personnel administration will be utilized.

(d) The plan includes the following documents as of the date of approval:

(1) The plan document and appendices including revised legislation, submitted June 21, 1976.

(2) Letters from the Department of Labor and Industry dated January 15, March 4, and August 23, 1976, and from the Department of Health dated August 18, 1976.

[41 FR 42658, Sept. 28, 1976, as amended at 51 FR 2489, Jan. 17, 1986]

### § 1952.371 Developmental schedule.

The Virginia plan is developmental. Following is a schedule of major developmental steps:

(a) Standards identical to the Federal standards will be completely adopted by January 1, 1978.

(b) A plan for delegation of authority to the State Fire Marshal for fire standards development and enforcement will be completed by December 31, 1976, with necessary legislative action and program implementation by July 1, 1978.

(c) State poster(s) informing public and private employees of their rights and responsibilities will be developed and distributed within 6 months of plan approval.

(d) A voluntary compliance program (including on-site consultation serv-

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ices) will be initiated within 6 months of plan approval.

(e) Both safety and health compliance programs will be fully staffed by FY 1979.

(f) Both safety and health consultation programs will be fully staffed by FY 1979.

(g) An automated Management Information System, including a court reporting system, will be developed within 6 months of plan approval.

(h) An Administrative Procedures Manual which will contain State regulations on standards promulgation, inspections, citations, proposal of penalties, review procedures, variances, etc., will be developed within 6 months of plan approval.

(i) A Compliance Manual establishing procedures to be used by safety and health inspectors and voluntary compliance personnel will be developed within 6 months of plan approval.

(j) The State is now responsible for enforcement of the State explosive code. That code will be amended within 6 months of plan approval to contain only standards identical to OSHA's standards.

(k) Job descriptions for both safety and health personnel will be reviewed and revised to accurately reflect job functions within 12 months of plan approval.

(l) The Directors of the Industry and Construction Safety Divisions in the Department of Labor and Industry will be brought under State merit system coverage by January 1, 1977.

(m) An inspection scheduling system will be developed for the health program within 6 months of plan approval and for the safety program within 8 months of plan approval.

(n) A public employee program will be developed and implemented within 6 months of plan approval.

[41 FR 42658, Sept. 28, 1976, as amended at 42 FR 10989, Feb. 25, 1977. Redesignated at 51 FR 2489, Jan. 17, 1986]

### § 1952.372 Completion of developmental steps and certification.

(a) In accordance with 29 CFR 1952.373(b), Virginia was to develop a plan for delegation of authority to the State Fire Marshal for fire standards